

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**HOUSTON GRANITE & MARBLE  
CENTER  
PLAINTIFF,**

**V.**

**CERTAIN UNDERWRITERS AT  
LLOYD'S OF LONDON,  
DEFENDANTS.**

**CIVIL ACTION NO. \_\_\_\_\_**

**[JURY DEMANDED]**

**DEFENDANTS' NOTICE OF REMOVAL**

COME NOW, Defendants, CERTAIN UNDERWRITERS AT LLOYD'S, LONDON (incorrectly named Certain Underwriters at Lloyd's of London), subscribing to Policy No. BOHOU4592, ("Defendants" or "Underwriters"), and file this, their Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 as follows:

**I. PROCEDURAL HISTORY**

1. On July 17, 2019, Plaintiff, Houston Granite & Marble Center ("Plaintiff"), filed its Original Petition and initiated an action against Defendants, Certain Underwriters at Lloyd's, London, subscribing to Policy No. BOHOU4592, in the 113<sup>th</sup> Judicial District Court of Harris County, Texas, in Cause No. 2019-48426 (the "State Court Action"). *See* Exhibit "A" attached hereto and incorporated herein by reference. The Civil Case Information Sheet is attached as Exhibit "A-1".

2. Underwriters were served on July 26, 2019, with a copy of the Summons of Citation and Plaintiff's Original Petition. *See* Exhibit "B" for a copy of the Civil Process Request and Citation attached hereto and incorporated herein by reference.

3. Underwriters filed an answer in the State Court Action on August 12, 2019. *See* Exhibit “C” attached hereto and incorporated herein by reference.

4. Defendants’ Notice of Removal was filed on August 22, 2019, which is within the thirty-day statutory time period for removal allowed under 28 U.S.C. § 1446(b).

## **II. FACTUAL BACKGROUND**

5. Underwriters provided a commercial lines policy to Plaintiff under Policy No. BOHOU4592 for the property located at 9500 Hempstead Highway, Houston, Texas 77092 (the “Property”), effective September 19, 2016, to September 19, 2017 (the “Policy”).

6. This suit arises out of a claim for property damage caused by a weather event allegedly on or about August 27, 2017. Plaintiff allegedly sustained physical damage to business personal property stored out in the open during this weather event. Plaintiff contends that Underwriters underpaid the loss.

7. Underwriters do not admit the underlying facts alleged by Plaintiff and expressly deny liability to Plaintiff.

## **III. DIVERSITY JURISDICTION**

8. Plaintiff, Houston Granite & Marble Center, LLC, is a limited liability company formed under the laws of Texas, whose members are an individual who resides in Katy, Texas, and is a citizen of Texas and a traditional, irrevocable trust, whose trustee resides in Texas and is also a citizen of Texas.

9. The Underwriters subscribing to Policy No. BOHOU4592 consisting of fourteen syndicates all of whom are registered in the United Kingdom and whose members are outside of the state of Texas.

10. Removal is proper because there is complete diversity between the parties.

11. Venue is proper in the Southern District of Texas, Houston, Division, because the property made the subject of the suit is located within the Houston Division.

12. The “matter in controversy” under 28 U.S.C. § 1332(a) is determined by reference to the plaintiff’s pleadings. The maximum damages the Plaintiff claims in its petition, if claimed in good faith, are controlling. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). “Where ... the petition does not include a specific monetary demand, [the defendant] must establish by a preponderance of the evidence that the amount in controversy exceeds \$75,000.” See *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). Only “expenses and costs” are excluded from the calculation of the matter in controversy. 28 U.S.C. § 1332(a). Attorney’s fees are an element of the amount in controversy where their recovery is authorized by a statute under which the plaintiff sues. *H&D Tire & Auto. Hardware, Inc. v. Pitney Bowes, Inc.*, 227 F.3d 326, 330 (5th Cir. 2000), cert. denied, 534 U.S. 894 (2001).

13. Here, the amount in controversy exceeds the jurisdictional limit of \$75,000.00, exclusive of interest and costs, in this lawsuit. Since Plaintiff only pled that the amount in controversy in its Original Petition was in excess of \$1,000,000.00, the amount is determined by reference to Plaintiff’s demand letter dated May 16, 2019, attached as Exhibit “E.” Plaintiff sought a total of \$1,755,034.17 for economic damages, attorneys’ fees, and consequential damages. *Id.* Plaintiff has also alleged violations of the Texas Insurance Code which allows for recovery of statutory penalties and attorneys’ fees and stated that Underwriters’ exposure was \$5,265,102.51. *Id.* Thus, the amount in controversy for the fourteen syndicates definitely exceeds the jurisdiction minimum limit of \$75,000.00

#### **IV. INFORMATION FOR THE CLERK**

14. Plaintiff: Houston Granite & Marble Center

15. Defendant: Certain Underwriters at Lloyd's at London
16. The case is pending in the 113<sup>th</sup> Judicial District Court of Harris County:  
Honorable Judge Jaclanel McFarland  
Harris County Civil Courthouse  
201 Caroline, 11<sup>th</sup> Floor  
Houston, TX 77002  
Phone: (832) 927-2480
17. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81, Defendants have attached copies of all processes and pleadings served upon it in the state court action. No further proceedings have been had therein. Pursuant to Local Rule 81, a copy of the trial court's docket sheet is attached as Exhibit "D" and an Index of Matters Being Filed is attached.
18. There are no other pleadings in state court.
19. Counsel for Plaintiff:  
James M. McClenney  
SBN: 24091857  
J. Zachary Moseley  
SBN: 24092863  
Heather E. Hall  
SBN: 24089909  
McCLENNY MOSELEY & ASSOCIATES, PLLC  
516 Heights Blvd.  
Houston, Texas 77007  
Phone: 713-334-6121  
Email: [james@mma-pllc.com](mailto:james@mma-pllc.com)  
[Zach@mma-pllc.com](mailto:Zach@mma-pllc.com)  
[heather@mma-pllc.com](mailto:heather@mma-pllc.com)
20. Counsel for Defendants, Underwriters:  
Peri H. Alkas  
SBN: 00783536  
Andrew R. Nash  
SBN: 24083550  
PHELPS DUNBAR LLP  
500 Dallas, Suite 1300  
Houston, Texas 77002  
Phone: 713-626-1386  
E-Mail: [peri.alkas@phelps.com](mailto:peri.alkas@phelps.com)  
[Andy.nash@phelps.com](mailto:Andy.nash@phelps.com)

***Jury Demand***

21. Plaintiff demanded a jury trial in state court.
22. Defendant demanded a jury trial in state court and requests a trial by jury in federal court as well.

***Miscellaneous***

23. On the same day this Notice of Removal was filed, Defendants filed notice of this removal in the State Court Action. A copy of this Notice of Removal filed in the State Court Action is attached as Exhibit "F."

24. Because Plaintiff is a limited liability company whose members are Texas residents; Defendants are an association of underwriters whose member are all foreign residents outside of Texas, and the amount in controversy exceeds \$75,000, the Court has subject matter jurisdiction based on diversity of citizenship and residency. 28 U.S.C. § 1332. As such, this removal action is proper.

WHEREFORE, Underwriters respectfully request that the above-entitled action be removed from the 113<sup>th</sup> District Court of Harris County, Texas, to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

By: /s/ Peri H. Alkas

Peri H. Alkas  
ATTORNEY-IN-CHARGE  
State Bar No. 00783536  
Federal Bar No. 15785  
Andrew R. Nash  
State Bar No. 24083550  
S.D. Tex. ID. 1690806  
PHELPS DUNBAR, LLP  
500 Dallas, Suite 1300  
Houston, Texas 77002  
Telephone (713) 626-1386  
Facsimile (713) 626-1388  
Email: [peri.alkas@phelps.com](mailto:peri.alkas@phelps.com)  
[Andy.nash@phelps.com](mailto:Andy.nash@phelps.com)

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all known counsel of record as listed below by placing a copy of same in the United States mail, certified, return receipt requested, electronically, and/or hand delivery on August 23, 2019.

James M. McClenney  
J. Zachary Moseley  
Heather Hall  
McCLENNY MOSELEY & ASSOCIATES, PLLC  
516 Heights Blvd.  
Houston, Texas 77007

VIA CM/RRR: 7016 1970 0001 1488 1189  
& VIA E-FILE NOTIFICATION:  
james@mma-pllc.com  
Zach@mma-pllc.com  
heather@mma-pllc.com

*/s/ Peri H. Alkas*

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Peri H. Alkas